

Foreign Law in American Law Libraries

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IN THE YEARS SINCE WORLD WAR II, American law libraries have been at new crossroads. There is now a widespread agreement on aims for their holdings in American law and that part of English law which has formed the basis of American law. Publications like those of Hicks,¹ Price and Bitner,² and Marke,³ together with numerous checklists and bibliographies, list many if not most of the desirable or preferred items in these fields of law. With the growth of the country, many law libraries have set themselves goals which previously had been reserved to the largest of them, *i.e.*, to approach desirable levels of completeness along reasonably well defined standards. Within this span of time, a good number of them have approached this level, and even new law libraries, with 100,000 or more volumes on Anglo-American law, have been amassed and organized, so as to form satisfactory collections for instruction and research.

Suddenly, with the surge of the international involvement of the United States in world politics and government, the gradual reduction of economic frontiers, migrations, aid to underdeveloped countries, and similar factors, the law of foreign countries is no longer the more or less exclusive preserve of a few outstanding law libraries, but has become a matter of national interest, and many law libraries are faced with the need of supplying the required printed materials. There is, however, no manual which adequately furnishes guidance to the acquisition and library organization of material in the field of foreign law. Hence, the development of foreign law collections has been and is a bewildering task, requiring training and experience in and constant occupation with foreign law.

What is foreign law? It is not a body or system of law; the term "foreign law" is not a term which defines a specific field of learning. Rather, it is understood to be the law of foreign countries and of their subdivisions, present and past, and the law which is identified by legal

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systems rather than by countries. Foreign law is, then, the law which is not American by adoption or origin, and encompasses hundreds of legal systems. The sole unifying factors in foreign law are books which deal with the law of a multitude of countries, and the discipline of comparative law which, as its name indicates, compares phenomena in various legal systems. Occasionally, one may wonder whether some law is foreign or domestic law. Opinions may differ upon the extent to which international law is a part of the domestic law and whether and in what measure international law should be treated as a separate discipline. Nor have law librarians clearly established the extent to which English law forms a genuine part of or a necessary adjunct to an American law collection. Except for legal instruction where jurisdictional differences in the treatment of a subject are of relatively minor importance, English law, past and present, is the law of a foreign country, and has become so more and more in recent years when English and American enactments have widened the gulf between the two legal systems.

Obviously, there are a tremendous number of foreign law books. As in American law, there are treaties, constitutions, the enacted laws and codes, compilations of law by time or subject, administrative regulations, court reports, administrative decisions, encyclopedias and dictionaries, textbooks and treatises, and periodicals. But there is a marked difference in many foreign countries concerning the form, substance, and relative importance of these types of legal materials. Enacted laws may be published in session laws, but more likely are published in official gazettes; and there are a few countries which at certain times have had neither session laws nor official gazettes. The decisions of appellate courts may be published, completely or selectively, in separate collections, official gazettes, or periodicals. Auxiliary materials, such as indexes and digests, may exist or not, and in the latter case their place may be taken by annotated dictionaries, encyclopedias, textbooks, and treatises or periodicals. For some countries, excellent bibliographies and lists of recent publications may be available; for other jurisdictions they are not. Some foreign legal systems have a most prolific and detailed legal literature, and the size of a country may be in spectacular contrast to the multitude of law books published and used therein. Other countries have an extremely meager legal literature. Even if one deducts books of temporary value, popularized statements of the law, and oddities, the overall number of foreign law books is so staggering that at this time there is no library

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in the world which endeavors to collect all the literature. The need for a world law library which would equal in coverage the best of our national libraries for each legal system is apparent, but at this time such a library is a dream for the future.

If complete coverage of foreign law cannot be attempted, selective methods of collecting must be used. Some of these methods are presently employed by all law libraries in which foreign law books are collected, and selected methods of collecting may be divided into those which do not withstand criticism and those which do.

There are law libraries which collect legal publications from any country, provided that they are published in the English language; this method of selection is inadvisable for several reasons. It calls for the acquisition, processing, and housing of materials from relatively unimportant jurisdictions, such as remote islands, to the exclusion of important materials which are originally published in other languages. This selective method provides also for the acquisition of English language books on foreign law and translations of foreign books. Granted, all foreign law libraries lay particular stress upon these types of materials because they furnish a quick approach to foreign legal systems or subjects and because they cover in certain instances a subject of foreign law better than it is covered in the domestic literature of a foreign legal system.

But translations are only those of single works whereas research in foreign law requires a multitude of books which furnish the connecting aspects of the foreign law under investigation and an appraisal of the sources of law. One book taken by itself does not tell the reader the meaning of legal terms, whether or not the written word prevails over customs, practice, or precedent, whether a rule of law stands by itself or must be appraised in connection with other legal factors, and whether or not an enactment or precedent is still in force and effect. Translations of foreign law books differ in quality from being excellent—an attribute which applies to only a few—to being palpably defective. In short, investigations in the field of foreign law are likely to be complicated and to require substantial facility in foreign languages. The extent to which the lack of knowledge of a foreign language can be overcome by the use of available translations or by the employment of translators (who convert one language into another) or interpreters (who supply the meaning conveyed by the foreign language) is primarily one of the ingenuity of the investigator.

A similar method of selectivity is that which excludes law books

written in languages other than Western languages or other than the commonly-used Western languages. Because of the widespread adoption of this method, American collections on Soviet, Asiatic, Moham-medan, and Greek law have suffered greatly. Obviously, persons responsible for the growth of collections lower the standards of legal research and damage national goals when they are influenced by language in the acquisition of books.

In some libraries undue emphasis is given to unsolicited book offers or to the fact that some other library already has the same materials. In this manner, for example, American libraries are well stocked with court reports from India; these mean little without the statutory enactments, which are difficult to collect and are rarely offered by the dealers that supply the court reports. An acquisitions program should be balanced and well rounded. The reputation of a publication is at times greater than it deserves. This evaluation applies particularly to certain serial publications which are easy to acquire and which consume a disproportionate part of the budget but will rarely be used. Serial publications of this nature may not even have been indexed in the past, or the indexes may be so antiquated or faulty as to make them useless. While one realizes that bookdealers are rarely equipped to give proper subject guidance, by habit or imitation, they may be likely to offer something of importance. Similarly, the reputation of a publication may furnish an important criterion in book selection. But book offers and reputation are criteria of limited value, except for new publications which cannot be appraised by their intrinsic merit.

Another method of selectivity is that of omission or lack of emphasis upon materials which are difficult to handle. In this manner, one of our outstanding law libraries has decided not to acquire certain French loose-leaf services because they cause a serious manpower problem in filing. But these services are actually indispensable for research in modern French law. Another law library of note does not collect foreign official gazettes although they may form the sole complete source for enactments, decrees, and regulations. There is nothing more difficult to collect than complete files of official gazettes of certain foreign countries, and librarians all over the world are faced with this situation. At the present time, libraries must endeavor to collect these gazettes as extensively as possible and to utilize all available sources which contain enactments and regulations that are not published separately in original prints or complete reprints. At some time in the future, it is to be hoped that the UNESCO agreement on foreign

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government publications may be broadened and ratified by the United States and that United States agreements with foreign countries for the exchange of government publications will be formulated in such a way as to extend their benefits to research libraries outside of the United States government.

Among the other methods of selective acquisition to be encountered is that which emphasizes primary materials to the neglect of textbooks, treatises, and periodicals. While it is true that exacting foreign law research must be based upon primary authorities, access to the primary materials and their evaluation are frequently provided or facilitated by recourse to explanatory and critical works and studies. At times one objection to foreign textbooks and treatises is that many of them lack a proper bibliographical apparatus and frequently recite the author's views more than (or to the exclusion of) those which prevail in practice. It may be puzzling to an American lawyer to encounter a commentary on the Swiss Penal Code which hardly ever refers to Swiss court decisions, or a French treatise which, without indicating so, reflects the author's views of what ought to be the law but is not, or a Mexican treatise which quotes from French, German, Italian, and Spanish writers, yet omits any mention of the persuasive or binding rulings of the Mexican Supreme Court. Fortunately, this type of treatise seems to be vanishing; in any event, commentaries and treatises of this sort reveal much about the local legal thinking, spur the researcher on to verifications in the primary sources, and thus are essential elements of a reasonably complete and usable collection on foreign law.

Another objection to many foreign textbooks, treatises, and periodicals is that they may not be thorough and cognizant of the work of fellow writers. This criticism applies more to the quality of legal research in a foreign country than to the desirability of library acquisitions. When in certain foreign countries legal research is not up to standards which may be customary elsewhere, libraries must be even more sure to provide the most complete coverage for such less articulate legal systems. Moreover, when in some countries writers are wont to expect the reader to be learned and to know or to be able to find the writings of others, librarians cannot boycott the literature of such countries, but must provide the plethora of materials in which all these writings are found.

Contrasted with the preceding methods of selectivity is that of defining the areas of collection along broad geographical distinctions.

Aside from books which deal with the law of a multitude of countries, one may collect books that deal with the law of countries which have been outstandingly influential in the development of modern legal systems. In this manner, some law libraries have concentrated upon the law of France, Germany, Italy, and Spain as having provided the most highly developed law in civil law countries. Other libraries have decided to make a special collection of books on the law of neglected legal systems. This method is fraught with difficulties. One cannot, for instance, collect Latin American law (as if there were a definable Latin American legal system) without also having the continental European legal materials upon which the law of Latin American countries is largely based. Similarly, one should not collect Soviet law without collecting continental European law because although the actual resemblance may be obscure, numerous Soviet legal institutions have been adapted from the latter law. Collecting along geographical distinctions has been found useful in areas in which there is a multitude of law libraries. In such areas, libraries have agreed with each other to divide the acquisition of foreign law materials among themselves by geographical areas for which each participating library is responsible; other libraries have taken the same stand without formal agreements. The division of responsibility for collection and upkeep is highly desirable, except in the largest law libraries, and is likely to work well for seldom-used materials, provided that all participating libraries are well intentioned and have similar standards of work performance and proportionate funds. Frequently-used materials must nevertheless be duplicated, and between materials which are rarely used and those which are commonly resorted to, there is a vast range in which duplication depends upon preference and financial means.

It is to be concluded that selectivity is the only practical, though intrinsically undesirable, method of collecting foreign law. What, then, is the best way of selecting areas of acquisition? The largest law libraries in the country should practice as little selectivity as possible, except to avoid meaningless duplication in their collections and to employ basic qualitative standards. All other law libraries will have collections which are less universal and thorough. Customary devices of library cooperation are essential although it must be admitted that interlibrary loans and photoreproductions are time consuming, frequently expensive, and impractical for probing into the realms of the unknown. Libraries should participate in cooperative acquisition projects which are sponsored by dealers and should engage in similar

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projects of their own; projects of the latter kind have been pursued in recent years for materials which are difficult to obtain and have found wide acclaim.

Once a law library has established temporary or permanent aims for its collection, the selective process of acquisitions should be tackled with planning and foresight, to create a useful foreign law collection. Although many items will fall into place by themselves, the planning of the collection is required in order to avoid undesirable purchases and regrettable gaps. The planning is different when one expects to provide for only a limited spectrum of use from when one anticipates unlimited use, as dictated by the present and future needs of the library's clientele. In American law schools, the number of faculty members who teach subjects dealing with foreign law or who have research aims in foreign law has steadily increased during the last three decades and is likely to increase more. One must also expect that certain aspects of foreign law will receive varying degrees of emphasis in the American legal education of the future. In the practice of law, libraries are confronted with an emphasis upon foreign law, as a result of the exigencies of modern times and of the gradual abolition of the procedural presumption that foreign law is the same as domestic law, coupled with a more strict observation of the international conflict of laws rules. Attorneys who previously never expected to give advice on foreign law matters or to present them in court must now familiarize themselves with these issues, and it seems to be a common experience that the preparedness of libraries in the foreign law field increases the foreign law activities of the legal profession. The planning of a foreign law collection is, therefore, not only for the present, but also for the future.

Effective foreign law planning requires the utilization of bibliographies, discussions with experts, reading and listening, visits to outstanding libraries, and at times, the permanent or temporary employment of experts. The smaller the foreign law collection, the greater should be the effort at planning. In large libraries, many unplanned purchases will eventually fall into a pattern, but this tendency cannot be expected in smaller institutions. In all libraries, much of the success of the collection depends upon the skill of the foreign law librarian: his ability to appraise the potential usefulness of the materials and their relative importance and to recognize what auxiliary or complementary materials are needed. He must avoid undue duplication in his collection and give preference to certain subjects which may be separ-

able from others. Some subjects of minor importance may be omitted, and acquisitions in subjects which are in constant flux (*e.g.*, labor law and taxation) may be delayed. But planning is not static and requires constant revision in keeping with the growth of the collection and new legal developments. Two examples may illustrate the latter point. When American investments abroad were less significant than they are now, several American libraries gave little emphasis to materials on foreign taxation; in the meantime these libraries had to fill these gaps. At this time, law schools are greatly interested in foreign law aspects concerning American investments, but at some time in the future, these schools may need to give more emphasis to ideas of the international unification of law and to the foreign law factors which must be considered in unification projects.

Acquisition methods for foreign materials vary according to the countries of origin and the type of materials involved. There are importers of law books who supply foreign materials; some of them charge the equivalent of the local price whereas others demand a substantial bonus for ordinary or extraordinary services. There are also foreign agents with almost worldwide purchasing facilities. Western countries with fully developed economies have excellent dealers in new law books, and the majority of them for secondhand books as well. Large foreign law libraries use a multitude of foreign suppliers who usually also furnish information on available books. However, there are countries that have no law book dealers and here purchases are made from anybody who may be interested in selling law books. In such cases, it is not uncommon to buy from librarians, stationery and department stores, or practically anybody, such as dentists, photographers, etc. Like their American counterparts, general book dealers in foreign countries are frequently not equipped to give good service in the field of law. Some items cannot be purchased and must be requested as gifts or may be acquired on the basis of an actual or fictitious exchange. In the latter case, the transaction is called an exchange, but the supplier neither requests nor receives an equivalent. Purchases may involve the crediting of an account of a third party and exchanges may be triangular affairs. Most Communist countries have inadequate official facilities for the foreign sale of secondhand books. Acquisitions from these countries are routed through either governmental export agencies or intermediaries in the United States and elsewhere. They may be acquired, too, through expensive barter deals which are organized by librarians or bookdealers. In many coun-

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tries, official publications may be purchased or requested from government agencies and advance payment is sometimes required; in other countries, governmental agencies show an utter lack of interest in the sale of their publications, may refuse to accept subscriptions, fail to answer letters, or insist upon forbidding payment procedures. Some foreign government agencies altogether lack facilities for the handling of orders and shipping. In underdeveloped and Communist countries, subscriptions must be placed well in advance or may be placed only during certain parts of the year, and the stock is likely to be exhausted immediately after publication. Other problems could be enumerated, but it would be impossible to describe in this brief presentation all the pitfalls associated with the acquisition of foreign law books.

Because library users frequently do not know in advance what foreign law books may serve their purposes, the cataloging and classification of such books deserve particular attention. The statement is frequently encountered that catalogs serve primarily internal staff purposes. However, experience with sound cataloging and classifying has shown that library users readily take to catalogs and the classed arrangement of books. This is particularly true of cataloging in the field of foreign law, where a wholesome mixture of generic and idiomatic subject headings should be used and other well known devices employed, such as added entries for the identification of books by common citation, and corner-marking by subject for lengthy files of cards under corporate headings. The failure of law librarians to agree upon a classification scheme which would be uniformly applied in the United States is indeed regrettable; a multitude of classification and modified notation systems are in use, and at least two new law classification schemes are in the process of development. However, Class K-Law, as developed at the Los Angeles County Law Library along the ordinary lines of Library of Congress classification schedules, has been successfully adopted by more than 25 law libraries and provides convenient guidance for the classification of foreign law books. Class K-Law is primarily based upon geographical rather than jurisdictional divisions and has broad outlines which are suited to small and medium-sized libraries as well as facilities for the detailed analysis of foreign law holdings which may be desired in large law libraries.

It would be wrong to assume that a foreign law librarian merely employs well defined methods of librarianship. He cannot perform his task without being familiar with the sources of foreign law, the legal concepts and language employed therein, and the particular

type of legal logic and its evidence in foreign law. He himself must be a scholar, versed in several foreign legal systems. His overall knowledge of law must be broad, and he must be able to test his knowledge and conclusions in legal research of his own. As long as the foreign law interest is in its initial or transitional phase, a foreign law librarian must provide much more guidance to library patrons than a reference librarian does in the field of Anglo-American law. Frequently, he is called upon to analyze a particular foreign law problem in its relationship to other problems in the same legal system and by contrast with domestic concepts and to point to the applicable law or to unsettled issues in the foreign law. In Europe, much of the research work in foreign law and a great deal of foreign law work for lawyers and courts is performed by foreign law institutes. There are no such institutes in the United States as yet, rather only a few specialized foreign law projects, usually attached to law schools and serving limited purposes. As long as there are no foreign law institutes in the United States, a foreign law librarian has a dual role: that of a librarian and that of a researcher.

Under these circumstances, foreign law librarians must be highly qualified people—qualified in law, librarianship, and languages. Until recently, most if not all foreign law librarians have been foreign born, and even now there are no facilities in this country for the study of foreign law librarianship. An institute for foreign law librarians, for those interested in that field and for other law librarians who wished to obtain a certain familiarity with foreign law librarianship was planned for the summer of 1962, at the Los Angeles County Law Library. Prerequisites of attendance were the customary ones for academic instruction, and prospective participants were scheduled to undergo advance studies so that the instruction at the Institute could be highly concentrated. The initial interest in this Institute was surprisingly great, but untoward circumstances made it impossible to hold the Institute.

Until better educational facilities for foreign law librarianship are furnished, law librarians interested in foreign law must rely upon articles and notes published in the *Law Library Journal* and other periodicals, papers presented at the annual meetings of the American Association of Law Libraries, basic instruction furnished in Institutes held by this Association, lists of new publications in foreign law, and other occasional publications. Beyond that, the process of education is one of self-education.

Two committees of the American Association of Law Libraries deal with foreign law matters. The Foreign Law Committee, which less

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than 20 years ago was slated for abolition because of lack of interest in foreign law, has recently been a gathering point and discussion group for matters of foreign law librarianship. The Committee on Foreign Law Indexing was responsible for the creation in 1960 of the *Index to Foreign Legal Periodicals*, after a Foundation grant had been obtained. Arrangements were made with the Institute of Advanced Legal Studies at the University of London for publication of the *Index*. The *Index to Foreign Legal Periodicals* is a sister publication to the *Index to Legal Periodicals* and shares basic features with the latter. However, some new features have been introduced in order to facilitate the use of the *Index to Foreign Legal Periodicals* in foreign countries. In several foreign research institutions, the latter *Index* is a required tool for researchers.

The activities of foreign law librarians are also likely to be international in other respects. In 1959, the International Association of Law Libraries was established in New York. While American membership is still predominant, it is the aim of the Association to provide for the mutual exchange of ideas and experiences among a growing worldwide membership. The Association publishes an informal *Bulletin*, promotes the exchange of law librarians and pursues other aims directed at the improvement of law librarianship, particularly foreign law librarianship. One of the long-range aims of the Association is the creation of a World Law Library.

In conclusion, American law librarians are likely to expand their knowledge and work in foreign law, and the present foreign law librarians are in line to become the prototypes of a future generation of foreign law librarians. At the present, some foreign law librarians will face tasks of an unlimited nature, and others will be specialists in certain foreign legal systems. Aims for foreign law collections have been greatly increased within a relatively short period but are likely to become much higher in the future. At this time, a foreign law library of 300,000 to 400,000 volumes may appear superb, a library of 75,000 to 150,000 volumes adequate for a well rounded and astutely selected collection, and a library of fewer volumes sufficient for defined and limited ends. As yet, the extent and growth of the legal literature of the world have not been measured or even estimated. Nevertheless, it is safe to say that the foreign law holdings of American law libraries will—and must—greatly increase in the years to come in order to satisfy the needs of legal research and the practice of law.

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